



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

October 15, 2003

Mr. Steve Aragón  
General Counsel  
Texas Health and Human Services Commission  
P.O. Box 13247  
Austin, Texas 78711

OR2003-7341

Dear Mr. Aragón:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 189554.

The Texas Health and Human Services Commission (the "commission") received a request for information relating to the Front-End Medicaid Fraud Reduction Pilot Program request for information ("RFI"), including a list of responding vendors and copies of the RFI responses. You state that the list of responding vendors has been provided to the requestor. You claim that the remaining requested information is excepted from disclosure under section 552.104 of the Government Code. While you also indicate that the submitted information may be excepted from disclosure under section 552.110 of the Government Code, the commission takes no position as to whether the requested information is so excepted. Rather, you state, and provide documentation showing, that you notified the interested third parties whose proprietary interests may be implicated by the request of the request for information.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to

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<sup>1</sup>The following third parties received notice pursuant to section 552.305: Advanced Payment Systems, L.L.C., Bio Id Technologies, Electronic Data Systems, eMedicalfiles, Innovation Connection Corporation ("Innovation"), Maximus, Inc., Nsuite, Progressive Financial Resources, Inc., and Schlumberger Omnes, Inc. ("Schlumberger").

section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act ("Act") in certain circumstances). We received correspondence from two third parties.<sup>2</sup> We have considered all exceptions claimed and have reviewed the submitted information.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of this exception is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

You inform this office that the requested information will be used by the commission "in an upcoming procurement process. . . . in analyzing appropriate and suitable technologies and in preparing specifications for a potential future request for proposal(s)." You acknowledge that no proposal to solicit bids has been issued by the commission. You contend, however, that release of the information at this time, before a proposal to seek bids has been issued and before a contract to implement the project has been awarded, would "jeopardize the [c]ommission's bargaining position," and "would assist bidders to determine the lowest level of service that might suffice to win an award." Based on your representations, we conclude that the requested information may be withheld from disclosure at this time under section 552.104 of the Government Code. As we are able to make this determination, we need not address the arguments submitted by Innovation and Schlumberger.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

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<sup>2</sup>Innovation and Schlumberger.

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877)673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512)475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 189554

Enc. Submitted documents

c: Mr. Trey Isaacks  
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(w/o enclosures)

Mr. W. Jack White, CEO  
Advanced Payment Systems, L.L.C.  
6219 Squires Court  
Spring, Texas 77389  
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Mr. Brian de Vallance  
Bio Id Technologies  
541 Independence Avenue, SE  
Washington, D.C. 2003-1251  
(w/o enclosures)

Ms. Kimberlee Hayward  
Electronic Data Systems  
Southwestern Region  
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Mr. Mark J. McCall  
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701 Brazos, Suite 500/#1740  
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Mr. Glen Palmer  
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1475 Richardson Drive, Suite 210  
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c: Ms. Penny H. Tisdale  
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